COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

{Chapter VIII, Rule 32(2)(b)}

Description of the Case.

CRIMINAL APPEAL No. 598 of 2001
(Old No. 901 of 1989)

Awatar Singh

.....Appellant

Versus

The State **.....Respondent**

Sri Rajeev Mohan, ld. Amicus curiae for the appellant
Sri Harish Pujari, ld. Addl. G.A. and Sri M.A. Khan, ld. brief holder for the State

Approved for reporting.
~~Not approved for reporting.~~

Dated: December 29, 2007

(Dharam Veer, J.)

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

CRIMINAL APPEAL No. 598 of 2001
(Old No.901 of 1989)

Awatar Singh S/o Sri Rawal Singh, R/o D-178 Continental Colony, Uttarkashi, P.S. Uttarkashi, Distt. Uttarkashi at present residing at Vill.P.O. Sikri, P.S. Hasina, Distt. Hoshiyarpur, Punjab

.....Appellant

Versus

The State ..... Respondent

Dated: December 29, 2007

Sri Rajeev Mohan, ld. amicus curiae for the appellant
Sri Harish Pujari, ld. Addl. G.A. and Sri M.A. Khan, ld. brief holder for the State

HON. DHARAM VEER, J.

This appeal, preferred by the appellant u/s 374(2) of Code of Criminal Procedure, 1973 (*hereinafter to be referred as Cr.P.C.*), is directed against the judgment and order dated 21.03.1989 passed by Sessions Judge, Uttarkashi in Sessions Trial No.13 of 1986, State v. Awatar Singh, whereby the learned Sessions Judge has convicted the appellant under Sections 452/307 of Indian Penal Code, 1860 (*hereinafter to be referred as I.P.C.*) and sentenced him for three years R.I. u/s 452 IPC and three years R.I. u/s 307 IPC and fine of Rs.2,000/- and in default of payment of fine, six moths further imprisonment was awarded. It was also directed that out of the fine realized from the appellant/accused, a sum of Rs.1,500/- would go as compensation to Smt. Surjeet Kaur and the remaining Rs.500/- would go to the State. Both the sentences were directed to run concurrently.

2. In brief, the prosecution case is that Charan Singh lodged a FIR in P.S. Kotwali Uttarkashi with the averments that his son Teja Singh used to play along with the son of Satpal Singh. On 18.6.1985, Teja Singh had gone to the house of Satpal Singh to play with son of Satpal Singh and the complainant-Charan Singh had gone to the house of Satpal Singh to take his son from there. When he reached in the

house of Satpal Singh, then after sometime at about 9:30 P.M., the present appellant Awatar Singh reached at the house of Satpal Singh being wrapped with a Chader. Thereafter, the appellant started to talk with Satpal Singh and at that time, wife of Satpal was giving food to him. Suddenly, the appellant put out his Chader from his body and with a sword, he attacked on Surjeet Kaur with the intention to kill her due to which Surjeet Kaur received injuries on both of her hands and head. When Satpal Singh tried to save her wife, then the appellant also caused injuries to Satpal. After that, the complainant made a noise and then appellant ran away from there after leaving his Chader and sword on the spot. At the time of occurrence, the complainant was accompanied with his son Teja Singh who was about 12 years old and the family of Satpal Singh was also inside the house. After hearing the noise, the neighbourers came on the place of occurrence and both the injured persons were sent to District Hospital in the company's vehicle. With the same averments, the FIR was lodged on 18.6.1985 at 11:05 PM at P.S. Kotwali Uttarkashi, Distt. Uttarkashi by Charan Singh, i.e. Ex.Ka-3. On the basis of this report, a Chik FIR was prepared by Constable Clerk Virendra Singh, i.e. Ex.Ka-4. The entry was also made in the G.D., the carbon copy of G.D. is Ex.Ka-5. The investigation of this case was entrusted to Devendra Singh Negi, Inspector. Injured Satpal Singh was medically examined by Sri K.L. Gupta, Medical Officer, District Hospital, Uttarkashi on 18.6.1985 at 11:10 P.M. and an injury report was prepared, the duplicate copy of injury report is Ex.Ka-1. Injured Smt. Surjeet Kaur was also examined by the same Medical Officer on the same day i.e. on 18.6.1985 at 10:30 P.M. and injury report was prepared, the duplicate copy of injury report of Surjeet Kaur is Ex.Ka-2. During the course of the investigation, the I.O. inspected the place of occurrence and prepared a site plan i.e. Ex.Ka-6. The appellant Awatar Singh was arrested on 19.6.1985 and the blood stained sword and

Chader was recovered from the house of injured Satpal on 19.6.1985 by the I.O. and a Fard was prepared, i.e. Ex.Ka-7. The blood stained clay and plain clay was also taken into possession by the I.O. on 19.6.1985 and a Fard was also prepared, i.e. Ex.Ka-8. The entry of the arrest of the appellant was also made in the G.D., the copy of that G.D. is Ex.Ka-9. The clothes, which were worn by the appellant at the time of incident, were also taken by the I.O. in his possession and a Fard was prepared, that Fard is Ex.Ka-10. The I.O. also sent the sword, Chader and cement plaster for chemical examination. S.S. Shukla, Scientific Officer submitted a report i.e. Ex.Ka-12 and in the sword and Chader, human blood was found. During the course of investigation, the I.O. recorded the statements of the witnesses and after completing the investigation, he submitted the charge sheet against the appellant Awatar Singh in the court of CJM, Uttarkashi, that charge sheet is Ex.Ka-11.

3. Learned Chief Judicial Magistrate, Uttarkashi committed the case to the court of Sessions on 13.11.1986 under section 209 Cr.P.C. after complying with the provisions of Section 207 Cr.P.C.

4. On 19.01.1987, Sessions Judge, Uttarkashi framed the charge against the appellant Awatar Singh u/s 452/307 IPC. The charge was read over and explained to the appellant who pleaded not guilty and claimed to be tried.

5. To prove its case, the prosecution has examined P.W.1 Dr. K.L. Gupta, who has medically examined the injured, P.W.2 Charan Singh, who is the complainant and eyewitness of the case, P.W.3 Ratan Singh, who is the subscriber of the FIR, P.W.4 Surjeet Kaur, who is an injured witness and P.W.5 Devendra Singh Negi, I.O. of the case.

6. Thereafter, the statement of the appellant-Awatar Singh was recorded u/s 313 of Cr.P.C. who denied the allegations made against him.

7. After appreciating the evidence on record and after hearing learned counsel for the parties, the learned Sessions Judge, Uttarkashi vide his judgment and order dated 21.03.1989 convicted the appellant-Awatar Singh under Section 452/307 of IPC and sentenced him for three years R.I. u/s 452 IPC and three years R.I. u/s 307 IPC and fine of Rs.2,000/- and in default of payment of fine, six moths further imprisonment was awarded. It was also directed that out of the fine realized from the appellant/accused, a sum of Rs.1,500/- would go as compensation to Smt. Surjeet Kaur and the remaining Rs.500/- would go to the State. Both the sentences were directed to run concurrently. Against the said judgment and order-dated 21.3.1989, the appellant has preferred the present appeal.

8. I have heard Sri Rajeev Mohan, learned amicus curiae for the appellant and Sri Harish Pujari, Addl. G.A. and Sri M.A. Khan, learned brief holder for the State and perused the entire material available on record.

9. To prove its case, the prosecution has examined P.W.1 Dr. K.L. Gupta who has stated in his statement that he was posted as Medical Officer in District Hospital, Uttarkashi on 18.6.1985 and on that day i.e. on 18.6.1985 at 11:10 P.M. injured Satpal Singh was medically examined by him and he found the following injuries on his body:-

1. *Incised wound 16 cm. x 1 cm. extending from wrist joint to middle phalynx of little finger left side direction from above downwards, fresh bleeding was present. Displ phalynx of left little finger zangrenous.*
2. *Incised wound left side of scalp 6 cm. x 1 cm. bonedeep (bone partially cut through) fresh bleeding present. This 3.3 cms. above the left eyebrow in anterior posterior oblique direction.*

3. *Compound fracture right thumb at 1st metacarpophangeal joint attached with the hand by a skin flap on inner and anterior aspect. Fresh bleeding present.*

He has further stated that there were three injuries on the body and all the injuries were grievous in nature and fresh and could be caused by a sharp edged weapon like sword. He has further stated that injured Satpal was medically examined by him on 18.6.1985 at 11:10 P.M. and he has prepared the injury report at the time of medical examination. He had taken the original register of the injuries on which he recorded the injuries and he has filed the duplicate copy of the injury report, that report is Ex.Ka-1. He has further stated that on the same day i.e. on 18.6.1985 at 10:30 P.M., he had medically examined Smt. Surjeet Kaur and he found the following injuries on her body:-

1. *Traumatic amputation right thumb, fresh bleeding present.*
2. *Compound fracture with incised wound measuring 11 cms. x 17 cms. through out a wrist joint obliquely through lower end of radius 2 ulna left side.*
3. *Lacerated wound 11 cms. x 6 cms. x bone deep lower 1/3 of left forearm corresponding to injury no.2. Fresh bleeding present. Radial artery cut with no circulation distally in left hand.*
4. *Incised wound near flerior aspect of right forearm upper part, tongue shaped flap present hanging from the proximal part of wound 5 cm x 7 cm x muscle deep.*
5. *Incised wound over left side of scalp parietal area left ear 5½ cm x .5 x scalp deep, fresh bleeding present. He further stated that injuries No.1, 2 and 3 were grievous in nature and injuries no.4 and 5 were simple in nature and could be caused by a sharp edged weapon like sword. The patient was in shock.*

He has further stated that he recorded these injuries in the medical register and he had taken that with him in the court and he has filed a duplicate copy of the injury report, i.e. Ex.Ka-2.

10. P.W.2 is Charan Singh who has stated that he was working in June, 1985 in the continental company and he was

living at that time in the Hill Colony. The said incident took place on 18.6.1985 at about 9:30 P.M. He had gone to the quarter of Satpal to take his son whose name is Teja Singh. His son used to play with the son of Satpal. He reached inside the quarter of Satpal and then after some time appellant Avatar Singh reached there being wrapped with a Chader. After putting out the Chader from his body, the appellant caused injuries with sword (*Kripan*) to Surjeet Kaur. When the husband of Surjeet Kaur tried to save her, then the appellant also caused injuries to Satpal due to which Satpal also sustained injuries. After seeing the entire incident, he made a noise and then appellant ran away from the place of occurrence and after hearing the noise, several persons came there. After that, Satpal and Surjeet Kaur were taken to the hospital and then he dictated the report to Ratan Singh Bisht, Security Officer and after that he lodged the report in the police station and he proved that report, i.e. Ex.Ka-3. He has further stated that *Kirpan* and sword are the same weapons. The Chader and sword was shown to this witness and he identified that this is the same Chader and sword which was recovered. Chader is Ex.1 and Sword is Ex.2 and both these items were sealed by the I.O. on the spot and a Fard was also prepared. In cross-examination in para 7, he has stated that Satpal had died. This witness was cross-examined at length by the defence counsel but nothing has come out from his evidence which may create any doubt in his evidence. The evidence of this witness is reliable and natural.

11. P.W.3 is Ratan Singh Bisht who has stated that in June 1985, he was the security officer in the Continental Company, Joshiyara, Uttarkashi. The said incident took place on 18.6.1985 at 9:30 P.M. He received the information that some quarrel took place between appellant Avatar Singh and Satpal and his wife and in that incident, appellant caused injuries to Satpal and his wife with sword. After receiving this

information, he had gone towards the office and then he received the information that the injured was taken to hospital. After that, he had also gone to the hospital and the injured was in the emergency ward. In the hospital, the eyewitness of the said incident Charan Singh had told him about the incident and on his dictation, he had written the report and Charan Singh also put his thump impression on that report. Whatever Charan Singh had dictated, he had written in the report. He has also proved the report, i.e. Ex.Ka-3. This witness was cross-examined by the defence counsel but nothing has come out from his evidence which may create any doubt in his evidence. The evidence of this witness is also reliable and natural.

12. P.W.4 is Smt. Surjeet Kaur, who is the injured witness, has stated in her evidence that her husband Satpal was working in Continental Company, Joshiyara as a mechanic and they were living in the Hill Colony Quarter No.D-107. Appellant Awatar Singh was known to her and he was also working on the date of occurrence in the said company and he was also living in hill colony in distance of one quarter from her quarter. She has further stated that the said incident took place on 18.6.1985, the time was about 9:30 P.M. and at that time she was giving food to Satpal and at that time Charan Singh and his son were also present there. At that time, appellant Awatar Singh came there being wrapped with a Chader and inside the Chader, he had concealed with *Kripan* (sword). Satpal asked him to sit down and also asked him to take food. She and Satpal were both sitting on the earth. After putting off his Chader, appellant attacked on her with *kripan* and he also caused injury on her head. When she tried to save herself, then she also received injuries in her hands also and when Satpal tried to save her, then the appellant also caused injuries to Satpal with the same sword (*kripan*). After that she was taken to the hospital

for the treatment. She has further stated that her husband Satpal had died on 15.1.1988. This witness was cross-examined at length by the defence counsel at length but nothing has come out from her evidence which may create any doubt in her evidence. The evidence of this witness is reliable, believable, natural and trustworthy.

13. P.W.5 is Inspector Devendra Singh Negi, I.O. of the case, who has stated that from 18.6.1985 to 15.6.1986, he was posted as S.O. Kotwali Uttarkashi. The investigation of this case was entrusted to him. Charan Singh had lodged the report Ex.Ka-3 in the police station on the basis of which Constable Clerk Virendra Singh prepared the Chik FIR, i.e. Ex.Ka-4. The entry was also made in the G.D., the copy of G.D. is Ex.Ka-5. On 19.6.1985, he inspected the place of occurrence on the pointing out of the complainant Charan Singh and site plan was also prepared, i.e. Ex.Ka-6. From the place of occurrence, he has recovered one blood stained Chader and blood stained sword which was left by the appellant on the spot after the incident and this Chader and sword were sealed on the spot and that Chader Ex.1 and sword Ex.2 were sealed on the spot and a Fard was also prepared i.e. Ex.Ka-7. He has also taken the blood stained clay and the plain clay from the place of occurrence and a Fard was prepared, i.e. Ex.Ka-8. The appellant was also arrested on 19.6.1985 by Sub-Inspector Bhopal Singh and the entry was made in this regard in the G.D., the copy of G.D. is Ex.Ka-9. The blood stained clothes of the appellant (shirt and trouser) were also taken into possession and they were sealed and deposited in the Maalkhana and a Fard was prepared by S.I. Bhopal Singh, i.e. Ex.Ka-10. During the course of investigation, he recorded the statements of the witnesses and after completing the investigation, he submitted the charge sheet in the court, i.e. Ex.Ka-11.

14. After that the statement of the appellant was recorded u/s 313 Cr.P.C. who has denied the allegations made against him. In documentary evidence he filed one document i.e. Ex.Kha-1, however he had not produced any witness in his oral evidence.

15. From the evidence discussed above, it is proved that the present appellant Awatar Singh had caused injuries to Surjeet Kaur and Satpal on 18.6.1985 at 9:30 P.M. inside the house of Satpal with the sword. P.W.4 Smt. Surjeet Kaur, who is the injured witness, has stated in her evidence that on 18.6.1985 at 9:30 P.M. she was giving food to Satpal and at that time Charan Singh and his son were also present there. At that time, appellant Awatar Singh came there being wrapped with a Chader and inside the Chader, he had concealed the *kripan* (sword). Satpal asked him to sit down and also asked him to take food. She and Satpal were both sitting on the earth. After putting off his Chader, appellant attacked on her with *kripan* and he also caused injury on her head. When she tried to save herself, then she also received injuries in her hands also and when Satpal tried to save her, then the appellant also caused injuries to Satpal with the same sword (*kripan).* After that she was taken to the hospital for the treatment. She has further stated that her husband Satpal had died on 15.1.1988. This fact is also corroborated from the evidence of P.W.2 Charan Singh who has stated in his evidence that the said incident took place on 18.6.1985 at about 9:30 P.M. He had gone to the quarter of Satpal to take his son Teja Singh. His son used to play with the son of Satpal. He reached inside the quarter of Satpal and then after some time appellant Avatar Singh reached there being wrapped with a Chader. After putting out the Chader from his body, the appellant caused injuries with sword (*Kripan*) to Surjeet Kaur. When the husband of Surjeet Kaur tried to save her, then the appellant also caused injuries to Satpal due to

which Satpal also sustained injuries. After seeing this entire incident, he made a noise and then appellant ran away from the place of occurrence and after hearing the noise, several persons came there. He has further stated that *Kripan* and sword are the same weapons and there is no distinction between them and they are called with two names viz. *kripan* and sword. P.W.3 Ratan Singh Bisht has also stated in his evidence that on 18.6.1985 at 9:30 P.M. he received the information that some quarrel took place between appellant Avatar Singh and Satpal and his wife and in that incident, appellant caused injuries to Satpal and his wife with sword. After receiving this information, he had gone towards the office and then he received the information that the injured was taken to hospital. After that, he had also gone to the hospital and the injured was in the emergency ward. In the hospital, the eyewitness of the said incident Charan Singh had told him about the incident and on his dictation, he had written the report and Charan Singh also put his thump impression on that report, that report is Ex.Ka-3. The injured Satpal and Surjeet Kaur were also medically examined by Medical Officer P.W.1 Dr. K.L. Gupta who has prepared the injury reports Ex.Ka-1 and Ex.Ka-2 in respect of Satpal Singh and Surjeet Kaur respectively. The injured Satpal was medically examined by the Medical Officer on 18.6.1985 at 11:10 P.M. and injured Surjeet Kaur was medically examined on 18.6.1985 at 10:30 P.M. and the FIR was lodged at 11:05 P.M. in P.S. Kotwali Uttarkashi and the distance of the police station from the place of occurrence is 3 Kms. In this way, the statement of P.W.4 Surjeet Kaur is supported by the evidence of P.W.2 Charan Singh and is also supported by the injury reports Ex.Ka-1 and Ex.Ka-2 and also from the evidence of P.W.1 Dr. K.L. Gupta as well as from the scientific report Ex.Ka-12. The injuries on the person of Satpal and Surjeet Kaur were on the vital part and also grievous in nature as per the evidence of P.W.1 Dr. K.L. Gupta. P.W.1 Dr. K.L. Gupta has stated that all

the three injuries of Satpal Singh and injuries no.1 to 3 of Smt. Surjeet Kaur were caused by some sharp edged weapon like a sword and could also be caused on 18.6.1985 at 9:30 P.M. In this way, the statement of P.W.4 Surjeet Kaur is fully corroborated by the evidence of P.W.2 Charan Singh who was an independent eyewitness. P.W.2 Charan Singh has stated in his evidence that Satpal Singh had died and P.W.4 Surjeet Kaur has also stated in her evidence that Satpal Singh had died on 15.1.1988. Since Satpal Singh was not alive during the course of trial, hence its statement could not be recorded. As per the evidence discussed above, the prosecution has fully proved its case against the appellant-Awatar Singh that on 18.6.1985 he had caused injuries to Surjeet Kaur with the intention to kill Surjeet Kaur with sword in the house of Satpal Singh D- 107, Hill Continental Colony, Joshiyara, Distt. Uttarkashi and when Satpal tried to save her, then the appellant also caused injuries to Satpal by sword. In this way, the prosecution has proved its case against the appellant beyond reasonable doubt u/Ss 452/307 IPC.

16. Sri Rajeev Mohan, learned amicus curiae for the appellant submitted that there at the place of occurrence, there was a colony and so many person had collected on the place of occurrence but the prosecution has not examined the neighbourers from the house of injured. On the other hand, Sri M.A. Khan, learned brief holder for the State refuted the submission advanced by learned counsel for the appellant and he cited a judgment rendered by the Hon'ble Supreme Court in the Case of **Chittar Lal** v. **State of Rajasthan** reported in (2003) 6 SCC 397 in which it has been held that conviction can be based on sole evidence of a witness if it inspires confidence. Para 7 of the judgment is quoted below:-

> "Evidence of the person whose name did not figure in the FIR as witness does not perforce become suspect. There can be no hard-and-fast rule that the names of all witnesses, more particularly eyewitnesses should be indicated in the FIR. As was observed by this Court in

Shri Bhagwan v. State of Rajasthan mere non-mention of the name of an eyewitness does not render the prosecution version fragile. The information was not lodged by an eyewitness. Mental condition of a person whose father has lost his life inevitably gets disturbed. Explanation offered by witnesses for non-mention of PW 3's name is plausible. Additionally, it is to be noted that in the present case the statement of PW 3 was recorded on the same day of incident, immediately after the investigation process was set into motion. Therefore, the plea that PW 3's testimony is doubtful lacks substance. The other plea was that conviction should not have been made on the basis of a single witness, PW 3's testimony. This plea is equally without essence. The legislative recognition of the fact that no particular number of witnesses can be insisted upon is amply reflected in Section 134 of the Indian Evidence Act, 1872 (in short "the Evidence Act"). Administration of justice can be affected and hampered if number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of one witness, leaving aside those cases which are not of unknown occurrence where determination of guilt depends entirely on circumstantial evidence. **If plurality of witnesses would have been the legislative intent, cases where the testimony of a single witness only could be available, in number of crimes the offender would have gone unpunished. It is the quality of evidence of the single witness whose testimony has to be tested on the touchstone of credibility and reliability. If the testimony is found to be reliable, there is no legal impediment to convict the accused on such proof. It is the quality and not the quantity of evidence which is necessary for proving or disproving a fact.** This position has been settled by a series of decisions. The first decision which has become locus classicus is *Mohd. Sugal Esa Mamasan Rer Alalah. R.* The Privy Council focused on the difference between English law where a number of statutes make conviction impermissible for certain categories of offences on the testimony of a single witness and Section 134 of the Evidence Act. The view has been echoed in *Vadivelu Thevar v. State of Madras, Guli Chand v State of Rajasthan, Vahula Bhushan v. State of T.N., Jagdish Prasad v. State of M.P. and Kartik Malhar v. State of Bihar.*"

17. Learned brief holder for the State also cited a judgment of Hon'ble Apex Court in the case of *Mahendra Singh v. State of M.P. reported in* ***(2007) 3 SCC (Cri.) 583.*** He relied on para 11 which reads as under:-

> ***"11. It is now a well-settled principle of law that conviction can be based on the basis of the testimony of a sole eyewitness."***

18. After considering the aforesaid judgments rendered by Hon'ble Apex Court and in view of the evidence discussed above, the argument advanced by learned amicus curiae is not sustainable in the eye of law.

19. Thus, the prosecution has proved the case against the accused-appellant under Sections 452/307 I.P.C. beyond reasonable doubt.

20. On the basis of the evidence available on record, the judgment and order dated 21.03.1989 passed by Session Judge, Uttarkashi is correct and justified, as per the law and also as per the evidence discussed above. I am in full agreement with the judgment and order passed by the learned Sessions Judge.

21. In view of the above said discussions, the appeal is devoid of merit and is hereby dismissed. The conviction as well as sentence awarded by the learned Sessions Judge, Uttarkashi to the appellant in S.T. No.13 of 1986 is hereby confirmed.

22. Let the record of the case be sent back to the trial court concerned for compliance of the order.

(Dharam Veer, J.)

29.12.2007
Rajeev Dang